

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 136 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

NARANBHAI RAMDAS

Versus

MANAGER, MANJUSHRI TEXTILES

Appearance:

MR RV DESAI for Appellant

MS PJ DAVAWALA for Respondent

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 13/12/1999

ORAL JUDGEMENT

#. Admit. Ms. Dawavala, learned counsel waives service on behalf of the respondent. With the consent of both the counsel, the appeal is taken up for final hearing today.

#. It is a very sorry state of affairs that the workman who met with an accident on 9.7.89 during the course of employment is not getting the amount of compensation

under the Workmen's Compensation Act and for that, the only reason that can be attributed is that he was not properly advised.

#. A question arose before the Workmen's Compensation Commissioner as to whether the workman sustained permanent disability because of the accident for which he was reduced to earning capacity to the extent of 50%. It appears that an application exh. 20 was given by the respondent requesting the court to direct the applicant to get himself examined by the Civil Surgeon, Civil Hospital, Ahmedabad and to obtain necessary certificate for permanent disability. Instead of complying with the said order, the appellant preferred a petition being Spl.Civil Application No. 9183/93 and obtained stay of operation and implementation of the order dated 23.7.93 passed below application exh. 20 by the Workmen's Compensation Commissioner. Since there was no stay of further proceedings, the learned Workmen's Compensation Commissioner proceeded with the hearing of the case and passed the impugned order dated 30th April, 1998 partly allowing the application and the respondent was directed to deposit Rs.34,426-20 ps. as the amount of compensation for the loss of 25% earning capacity. Since the petition was pending in this Court, the learned Workmen's Compensation Commissioner observed that his order will be implemented after the final order of the Hon'ble High Court in Spl.C.A. No. 9183/93 and that the appellant is entitled to get the said order modified if the Hon'ble Court determines the earning capacity of more than 25% as loss of earning capacity. Instead of proceeding with the hearing of the Special Civil Application, the appellant on 1.9.98 sought permission from this Court to withdraw the petition. This Court (Coram: Kundan Singh, J.) passed the following order.

"Learned counsel for the petitioner states that he does not want to press this petition and he wants to withdraw this petition. Accordingly, this petition is dismissed as withdrawn. Rule is discharged with no order as to costs. Interim relief granted earlier stands vacated."

The resultant effect of this order would be that even though the Workmen's Compensation Commissioner directed the appellant to go before the Civil Surgeon and get himself examined regarding the extent of loss of permanent disability, he has not determined the extent of loss of permanent disability. The respondent-Company has in effect disputed the injury sustained by the appellant and it is the case of the respondent that there is no

permanent disability and therefore, 50% loss of earning capacity claimed by the appellant is too on the higher side. Learned Commissioner on the basis of the evidence of Dr. D.K. Modi, exh. 19 assessed the permanent functional disability of 25% and determined the amount of compensation of Rs. 34,426.18 ps. Since the petition is withdrawn after the order of the Workmen's Compensation Commissioner, obviously he was not aware about the developments in the matter. Under the circumstances, the matter is required to be remanded to the Workmen's Compensation Commissioner for the purpose of ascertaining the disability as to what extent is the loss of the earning capacity of the appellant. Therefore following directions are given.

#. The learned Workmen's Compensation Commissioner shall pass appropriate orders after considering the fact of withdrawal of the petition and the effect thereof on the case of the appellant. Learned Commissioner shall take appropriate decision in the matter considering the facts and circumstances of the case after hearing the parties within six weeks from the date of receipt of the order of this Court.

#. In the result, this appeal is partly allowed. The impugned order dated 13th April, 1998 passed by the learned Workmen's Compensation Commissioner is set aside. The appeal is ordered to be remanded for the purpose of taking a decision afresh bearing in mind the questions stated above including the penalty as also the interest, provided a case is made out for the same.

pirzada/-